The influence on legal interpretation of the Puritan theocrats, and of the pioneers and their frontier, has never before been so adequately shown; and how the frontier generated what another Dean (Wigmore) has called the "sporting theory of justice" is delightfully treated.

A noble and very discriminating tribute too is offered to that long line of judges before the Civil War, who with infinite patience and labor, though often with sad lack of tools, went over the *corpus juris* of England, and selected such parts as seemed to them fitted for American use. Considering how highly all those jurists thought of "the obsolete legal science" of Blackstone, so large an appreciatory garland was hardly to be expected.

The book deserves wide vogue; for the young lawyer there is nothing else that states so concisely, learnedly and on the whole fairly, the now current reasons for the judicial errors of the past; nothing which so briefly and confidently justifies the principles of what (most probably) his professors taught him and are now teaching others; for the intelligent layman it exhibits an understandable method of preferred judicial action, very flattering to the citizen's probable inclination toward the political theory of lawmaking; and a majority of lawyers over about fifty-five, and all who for thirty years have read no more jurisprudence than most hard-working practitioners, ought by all means to read it carefully, in order to discover how singularly obsolete they are, in respect of everything legal except (strange to say) the profitable practice of a profession, whose thinking about fundamentals is asserted to be something as foreign to their professional spirit, as it would have been to that of the neglected Coke, the rejected Blackstone, and the misguided James Coolidge Carter. The final touch of modernity is given to these brilliant essays, by the fact that they were written as the faith of a *Carter* Professor of Jurisprudence.

CHARLES M. HOUGH

CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

THE NATURE AND SOURCES OF THE LAW. By JOHN CHIPMAN GRAY. Second edition, from the author's works, by ROLAND GRAY. New York: THE MACMILLAN Co. 1921. pp. xviii, 348.

As Mr. Roland Gray states in the preface, Professor Gray had before his death made notes in preparation for a second edition of the present work. His desire was, we are told, to put the book into "a form which would reach a larger number of readers." The editor has endeavored to carry out this purpose, both in ways especially indicated by Professor Gray and in others which seemed to the editor adapted to that end. The changes made are not of a fundamental character. A few paragraphs at the beginning of the book have been omitted, several passages have been transposed, and a very limited number of additions made to the text. The changes in the text are all the work of Professor Gray himself and do not in any way alter the general character of the conclusions arrived at in the first edition. In the notes translations are now given of quotations from works in other languages. These will doubtless be of use to some of the wider circle of readers now aimed at. In the notes also will be found references to articles and books which have appeared since the first edition was published.

The points of view expressed by Professor Gray in the work under consideration are, of course, so well known to all serious students of legal science that it is unnecessary to enter into any detailed discussion of them here. One of the most important related, it will be recalled, to the question whether in deciding cases judges exercise a legislative function. About the time Professor Gray wrote the present work there appeared the discussion of that question by Mr. James C.

Carter in his book on *Law, its Origin, Growth and Function.* Mr. Carter, as is well known, took the position that the judges were the "discoverers" and not the "makers" of the law. In refuting this proposition Professor Gray took the extreme position that even statutes duly passed by the legislature are not "law," but merely "sources of law," upon which the judges draw in exercising their law-making powers (pp. 125 and 170 in the present edition). With these two extreme views the reader will be interested to compare the view taken by Judge Cardozo of the New York Court of Appeals in his delightful lectures upon *The Nature of the Judicial Process* recently delivered at the Yale Law School. (Yale University Press, 1921). The learned justice concludes that "the truth is midway between the extremes" represented by Carter and by Gray. This, however, is not the place in which to set forth the arguments offered in support of this statement, and the learned reader must therefore be left to obtain them for himself at first hand from Judge Cardozo's lectures.

WALTER WHEELER COOK

COLUMBIA LAW SCHOOL

TRUST ESTATES AS BUSINESS COMPANIES. By JOHN H. SEARS. Second Edition. Kansas City, Mo.: VERNON LAW BOOK CO. 1921. pp. xx, 782.

Two or more persons, co-partners, may form a corporation to carry on their business, provided there is a statute authorizing them to incorporate for such purpose. Thereafter, the rights as between the incorporated group and persons dealing with it, with respect to corporate torts, contracts and property, must be determined in actions by or against the corporation and not by and against the members of the group individually. The result of this is that the members of the group escape individual liability and the ownership of its property remains unaffected by a change in the membership of the group. This rule of procedure is not a mere arbitrary and technical requirement, but is essentially just, because it gives effect to the intention of the parties in interest and enforces and protects their rights as they understand them. And it would seem that courts might have adopted and applied this rule in every case where it appeared that the persons forming the corporation intended to act as a group and not individually. But, according to a rule settled at a remote period, courts cannot, without legislative sanction, recognize the members of this group as a unit distinct from the members. This usurpation on the part of the sovereign or legislative power has been the fruitful source of misconception of the nature of a corporation. Legislators think of corporations as creatures of their own, and, as such, subject to their power of life or death. They think of them as Frankensteins of vast wealth and resources, possessed of privileges with which the legislators have graciously endowed them. And, with a certain savage instinct, they can see no reason, economic or moral, why these creatures of theirs should not be subjected to special taxation and to all sorts of regulations and restrictions, overlooking the obvious fact that, after all, these regulations, restrictions and taxation are burdens upon the individuals composing the corporation just as they would be upon the members of a co-partnership, if treated in the same way.

To escape some of the difficulties and disadvantages resulting from this legislative policy, without losing the advantage of exemption from personal liability, and of an ownership of property unaffected by a change of the parties in interest, groups of individuals have in recent times adopted the device of the business trust. Instead of forming a corporation to be managed by its directors for its stockholders, they transfer their assets to trustees with authority to conduct the business, subject to the rules relating to trusts, for the benefit of themselves as